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Corporation and Ameron B.V.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 CENTRAL DIVISION
13

14 AMERON INTERNATIONAL
15 CORPORATION, AMERON B.V.,
16 and GREENWICH INSURANCE
COMPANY,

17 Plaintiffs,

18 vs.

19 AMERICAN HOME ASSURANCE
20 COMPANY,

21 Defendant.

CASE NO. CV 12-08582 R (VBKx)

**ORDER GOVERNING THE
TREATMENT OF CONFIDENTIAL
INFORMATION**

22
23 The parties having agreed to the following in the Stipulation for
24 Proposed Protective Order Regarding The Treatment Of Confidential Information,
25 filed in this action on January 22, 2013 (the "Stipulation"), IT IS HEREBY
26 ORDERED AS FOLLOWS:

27 1. For purposes of this Protective Order:
28

1 (a) “Ameron” shall mean Ameron International Corporation or
2 Ameron B.V.

3 (b) “Underlying Action” shall mean the action brought on or about
4 April 28, 2004, by Sable Offshore Energy, Inc. and others, in the Supreme Court of
5 Nova Scotia, Canada captioned *Sable Offshore Energy, Inc., et al. v. Ameron*
6 *International Corp., et al*, Supreme Court of Nova Scotia S.H. No. 220343.

7 (c) “Confidential Information” shall mean all information related to
8 or produced in the Underlying Action, including but not limited to documents
9 exchanged in the Underlying Action, other correspondence and discovery, attorney-
10 client information and work product of Ameron’s defense counsel in the
11 Underlying Action. Confidential Information shall also include trade secret
12 information as defined in California Civil Code § 3426.1; and other non-public
13 information that is sensitive from a business or competitive standpoint, including
14 but not limited to past, present and future business plans and strategies, revenue
15 information, and pricing policies.

16 (d) “Information” includes information in any form, whether
17 provided in response to a request for information, in documents, or in testimony in
18 deposition or any other proceeding.

19 (e) “Document” includes tangible paper documents as well as
20 information stored electronically or by other means or on other media.

21 (f) Confidential Information shall not include pleadings, or any
22 Documents or Information that are a matter of public record, whether in the
23 Underlying Action or elsewhere. The parties intend this Protective Order fully to
24 comply with the “implied undertaking” rule under the common law of the province
25 of Nova Scotia, Canada. Consequently, information produced in the Underlying
26 Action is “public” only if it can be derived from sources independent of that
27 litigation. The parties intend that this Protective Order shall permit the parties to
28 exchange and present to the Court in this action such Confidential Information as is

1 discoverable, consistent with the terms and conditions of this Protective Order.
2 This Protective Order applies equally to original Information and Documents as
3 well as derivatives thereof, including but not limited to copies, extracts, excerpts,
4 digests, compilations, and summaries.

5 (g) "Party" means a party to the Stipulation.

6 2. This Protective Order shall govern any Confidential Information
7 furnished by any party to any adverse party in connection with the discovery and
8 pre-trial phases of this action. This includes but is not limited to Confidential
9 Information produced in response to demands for production of documents or other
10 things; responses to interrogatories; responses to requests for admission; testimony
11 and exhibits in deposition or any other proceeding; and all copies, extracts,
12 excerpts, summaries, compilations, designations, and portions of the foregoing.
13 This Protective Order also shall govern any Confidential Information furnished by
14 any third party pursuant to subpoena or otherwise in connection with this litigation,
15 and third parties shall have the same rights and obligations under this Protective
16 Order as parties to this litigation.

17 3. A document containing Confidential Information will be subject to this
18 Protective Order when it is designated as confidential using the following
19 procedure:

20 (a) The party producing the document shall review the document
21 and make a good faith determination that the document contains Confidential
22 Information. Each page of the document containing Confidential Information shall
23 be marked with the legend "Confidential – Subject to Protective Order."

24 (b) If documents are produced on a compact disc ("CD") and the
25 CD is marked "Confidential – Subject to Protective Order," all documents on the
26 CD shall be treated as confidential, even if they are not marked as in paragraph (a)
27 above.
28

1 (c) If a third party produces information that it does not designate as
2 Confidential Information, but a party to the litigation believes that it contains
3 Confidential Information of the party to the litigation or of its affiliates, that party
4 may designate it as Confidential Information within ten days of receipt of the
5 information by re-producing the pages containing Confidential Information with the
6 legend “Confidential – Subject to Protective Order.”

7 (d) If a document is not designated Confidential Information, but
8 the producing party later determines that the document or a part of the document
9 should be so designated, a late designation may be made by re-producing the
10 document with the pages containing Confidential Information marked with the
11 legend “Confidential –Subject to Protective Order.” No party or third party shall
12 have any liability due to disclosure of the information that occurred prior to such
13 late designation.

14 4. A transcript containing Confidential Information may be designated as
15 such by marking the cover page “Confidential – Subject to Protective Order.”

16 (a) Any party may provisionally designate a transcript as
17 confidential by so stating on the record, or by so stating in a writing sent to all
18 counsel of record within five days of the testimony. That designation shall extend
19 for 14 days after the transcript is delivered to the designating party. During that 14-
20 day period, the designating party shall, in good faith, determine which, if any, pages
21 of the transcript actually contain Confidential Information and shall so
22 communicate that determination to all parties by designating those pages of the
23 transcript to be marked “Confidential – Subject to Protective Order.” The 14-day
24 provisional period may be extended by agreement of the parties or by order of the
25 Court.

26 (b) If only individual pages are marked and it is later determined
27 that additional portions of the transcript should be designated as containing
28 Confidential Information, that party may so designate by identifying the pages

1 containing Confidential Information to all parties. No party or third party shall
2 have any liability due to disclosure of the information that occurred prior to such
3 late designation.

4 5. Except as provided in this Paragraph 5, Confidential Information shall
5 not be disclosed to any person or entity. Confidential Information, including
6 documents and transcripts so designated, may be given, shown, disclosed, made
7 available, or communicated only to:

8 (a) Counsel for a party to the Stipulation, including paralegals, staff
9 members, and consultants employed by such counsel;

10 (b) A Party, or an officer, director, employee, claims administrator
11 or in-house counsel for a Party, or a Party's affiliate, subsidiary, parent company,
12 successor, reinsurer or auditor, provided any person affiliated with such an entity to
13 whom Confidential Information is provided has a legitimate, good faith reason to
14 viewing the Confidential Information, and is subject to the terms of the Stipulation
15 and Protective Order;

16 (c) The Court, including Court personnel and members of the jury;

17 (d) A court reporter at a deposition where Confidential Information
18 is disclosed;

19 (e) Any person that the parties stipulate in writing may be given
20 Confidential Information;

21 (f) Any person who authored or was identified as an original
22 recipient or party to the Confidential Information;

23 (g) Any expert retained by a party, whether the expert is a
24 consulting or testifying expert, provided that the expert agrees in writing to be
25 bound by this Protective Order;

26 (h) A witness at a deposition, deposition preparation or at trial, but
27 such witness shall not be permitted to retain a copy of the Confidential Information;
28 and

1 (i) Administrative and regulatory bodies and others, as required by
2 law.

3 6. Documents and transcripts designated as containing Confidential
4 Information shall not be used for any purpose by any person or party receiving
5 them other than for the purpose of determining the nature and/or extent of
6 insurance coverage. Notwithstanding anything else in this Protective Order,
7 however, no person or party shall be bound by the provisions of this Protective
8 Order regarding designated Confidential Information known or available to that
9 person outside the discovery process in this case.

10 7. Upon settlement, final judgment, or termination of this action,
11 including any appeals, and at the Disclosing Party's written instruction, all
12 Confidential Information produced hereunder shall be either returned to the
13 Disclosing Party or destroyed, except that Confidential Information may be retained
14 to the extent required to comply with applicable law or regulation, but only to the
15 extent and only for the time period so required. In the event that Confidential
16 Information is destroyed, an affidavit of destruction shall be provided.

17 8. Any document or transcript designated as containing Confidential
18 Information to be filed in a court shall be filed under seal, and the caption of the
19 document shall so state. The parties agree not to oppose any ex parte motion to file
20 under seal made by the filing party.

21 9. In the event a party determines that information being produced is
22 highly sensitive information of the type that would have economic or strategic
23 value to the party whose counsel is to receive the information, the party may
24 designate the information as "Confidential – Subject to Protective Order –
25 Attorneys' Eyes Only." All parts of this Protective Order apply equally to
26 Confidential Information designated as "Confidential – Subject to Protective
27 Order– Attorneys Eyes Only," except that parties (other than in-house counsel)
28 shall not be provided such information.

1 10. Nothing herein shall prevent a party from using any Confidential
2 Information at a trial or at any hearing (including motion hearings). However, the
3 manner in which Confidential Information is to be disclosed at a trial or hearing
4 shall be determined by the Court or by agreement of the parties with a view to
5 protecting its confidential status and to complying with confidentiality obligations
6 imposed by the “implied undertaking” rule pursuant to the common law of Nova
7 Scotia, Canada, as set forth in paragraph 1, above. The party seeking to use
8 Confidential Information under this paragraph shall comply with paragraph 8.

9 11. If any party having possession, custody, or control of any Confidential
10 Information receives a subpoena or other process that would require the disclosure
11 or production of designated Confidential Information, that party shall promptly:

12 (a) Notify in writing the attorneys of the party claiming
13 confidentiality of the Confidential Information sought by the subpoena or other
14 process or agreement;

15 (b) Furnish those attorneys with a copy of the subpoena or other
16 process or agreement; and

17 (c) Provide reasonable cooperation with respect to a procedure to
18 protect the Confidential Information.

19 If the party asserting confidentiality makes a motion to quash or to modify the
20 subpoena or process, there shall be no disclosure until the court has ruled on the
21 motion, and then only in accordance with the ruling (unless disclosure prior to a
22 ruling is required by law). If the party does not make such a motion within fifteen
23 days of receipt of written notice and a copy of the subpoena or process under
24 Paragraph 11(a) and (b) above, the person or party receiving the subpoena or
25 process shall be entitled to comply with it, provided that the person or party has
26 fulfilled its obligations under this paragraph.

27 12. If a party believes that a transcript or document has been designated as
28 containing Confidential Information when it does not actually contain Confidential

1 Information, that party shall so inform the designating party's counsel. In the event
2 that there is a disagreement as to whether the document or transcript has been
3 properly designated, there shall first be an attempt in good faith to resolve such
4 dispute via informal negotiation and agreement of the parties. If such negotiation
5 fails to resolve the dispute, and the parties are in litigation or arbitration, the party
6 challenging the designation of particular materials may move the Court or the
7 arbitrator, as appropriate, for a determination of the appropriate designation of the
8 materials. The party designating the information as confidential shall have the
9 burden of showing that the transcript or document does contain Confidential
10 Information. The document or transcript shall maintain its confidential designation
11 pending resolution of the motion. There is no time limit within which a party
12 contesting Confidential Information is required to bring such a motion.

13 13. If Confidential Information is disclosed to any person other than in the
14 manner authorized by this Protective Order, the party responsible for the disclosure
15 shall, immediately upon learning of such disclosure, inform the producing party of
16 all pertinent facts relating to such disclosures and shall make every reasonable
17 effort to retrieve the Confidential Information and to prevent disclosure by each
18 unauthorized person who received such information.

19 14. The agreement of the parties to the Stipulation shall not be construed
20 as an agreement or admission: (a) that any Information or Document designated as
21 "Confidential – Subject to Protective Order" or "Confidential – Subject to
22 Protective Order– Attorneys' Eyes Only" is in fact Confidential Information; or (b)
23 as to the correctness or truth of any allegation made or position taken relative to any
24 Information or Document designated as "Confidential – Subject to Protective
25 Order" or "Confidential –Subject to Protective Order – Attorneys' Eyes Only."

26 15. Upon notification that a document or other discovery material has been
27 inadvertently produced and/or that a claim of attorney-client privilege, attorney
28 work product, or other applicable privilege or protection will be made with regard

1 to such document or other discovery material, the Party receiving such notice shall
2 promptly return or, at the producing Party's option, destroy any and all copies of
3 such document or other discovery material and shall refrain from reading or
4 reviewing said document or discovery material beyond the extent necessary to
5 identify it as the inadvertently produced material, or from utilizing it in any manner
6 or form including specifically but not exclusively, use during the course of a
7 deposition, review with witnesses, or any other disclosure or review whatsoever.
8 The receiving party shall also remove all references to such material from any
9 attorney work product. Together with notification of inadvertent production, the
10 producing Party shall supply a privilege log to the receiving Party describing said
11 document or other discovery material in compliance with Rule 26(b)(5)(A) of the
12 Federal Rules of Civil Procedure. The inadvertent production of any document or
13 discovery that is subsequently retrieved or destroyed pursuant to this paragraph
14 shall not be deemed to be a waiver of the claim of privilege or protection asserted.
15 Notwithstanding the foregoing, nothing in this paragraph shall prevent a receiving
16 Party, after promptly returning or destroying the discovery material, from
17 challenging the producing Party's designation of the document or discovery as
18 subject to attorney-client privilege, attorney work product, or other applicable
19 privilege or protection or otherwise not subject to production, provided that (a) such
20 challenge complies with Local Rules 37-1 through 37-4, (b) any review by the
21 Court of the materials in question is conducted in camera, and (c) the challenge
22 shall not assert as ground or basis that the producing Party waived any privilege or
23 protection because of the inadvertent disclosure.

24 16. The Court retains jurisdiction to make amendments, modifications,
25 deletions, and additions to this Protective Order as the Court from time to time may
26 consider appropriate, upon motion of any party or otherwise. The provisions of the
27 Stipulation and Protective Order regarding the use or disclosure of Confidential
28

1 Information will survive the termination of this action, and the Court will retain
2 jurisdiction with respect to this Protective Order.

3 17. The parties may propose amendments to this Protective Order in
4 writing.

5 IT IS SO ORDERED.

6
7 DATED: January 30, 2013



HON. MANUEL L. REAL
UNITED STATES DISTRICT JUDGE